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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,753	12/04/2003	Johann Mcseth	TER-02P0020	7612

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EXAMINER

GREENE, DANIEL LAWSON

ART UNIT PAPER NUMBER

3694

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
10/727,753	MESETH, JOHANN	
Examiner	Art Unit	
Daniel L. Greene Jr.	3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1 and 3-5 are pending. Applicant has merely argued against the rejections set forth in the previous Office action mailed 6/20/2006. No claims were amended in the response/communication received 9/20/2006.

### *Response to Arguments*

2. Applicant's arguments, see pages 2-4 of 15, filed 9/20/2006, with respect to sections 4 and 5 of the previous Office action mailed 6/20/2006 have been fully considered and are persuasive. Accordingly the rejections of said sections 4 and 5 have been withdrawn.

3. However, Applicant's arguments regarding sections 6-9 are not persuasive as explained in detail below. Accordingly said rejections, i.e. sections 6-9, are maintained and incorporated herein by reference.

4. Regarding section 6 of the previous Office action.

### **Applicant argues (see pages 7-8):**

The Kobayashi reference discloses a system that does not refer to applications in the nuclear field, but instead, Kobayashi discloses cooling systems for electronic components. Kobayashi does not disclose problems or aspects in connection with the condensation of steam in abnormal occurrences. Especially with regard to the fact, that the concepts disclosed in the instant application for treating steam portions are specific safety concepts with very typical boundary conditions (constraints).

As seen from the above given comments, the Kobayashi reference does not show a vertical condensation tube having an upper end communicating with the pressure chamber and a lower end immersed in the cooling liquid in the condensation chamber, as recited in claim 1 of the instant application.

**Response:** the recitation "of a nuclear power plant" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Kobayashi does indeed disclose "a containment" having all of the limitations disclosed in the instant claim 1 as explained in section 6 of said previous Office action. The claim language of the instant application does not contain or define or set forth all of the particulars applicant argues on pages 5-7 of his remarks while the Examiner has explicitly set forth how the claim language reads on the reference.

Although the claims are interpreted in light of the specification, limitations from the specification are NOT imported into the claims. The Examiner must give the claim language the broadest reasonable interpretation the claims allow.

**See MPEP 2111.01, which states**

While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims **must be interpreted as broadly as their terms reasonably allow**. In re American Academy of Science Tech Center, F.3d, 2004 WL 1067528 (Fed. Cir. May 13, 2004)

The Examiner has done just this. Interpreted the precise language of the claims themselves and how they may be interpreted in their broadest reasonable sense. Since the claim language does not specifically direct the claim to the nuclear field alone it is proper for the Examiner to search other areas outside of the nuclear area for STRUCTURES that contain all of the structural limitations set forth in the claim.

Further there is no reason that the teachings of Kobayashi could not be used in a nuclear power plant setting by, for example, changing its size.

5. Regarding section 7 of the previous Office action.

**Applicant argues (see pages 8-9):**

While the Garabedian reference may disclose outlet nozzles with slanted outlet surfaces, where pulsed pressure or the like, generated by exiting steam are to be eliminated. It is pointed out that the slanted construction of the nozzle according to Garabedian is specifically configured to the geometries disclosed in Garabedian and to the media treated therein. In Garabedian, the elimination of pressure disturbances or the like by the slanted construction disclosed therein principally only plays a role in the specific type of steam inlet disclosed therein. That being a steam inlet in which the steam inlet occurs by overflow pipes that are directed downward. Garabedian explicitly discloses this, in particular, because the system parameters disclosed therein are configured to the precise geometry of the overflow pipes disclosed therein.

Therefore, it is applicant's position that Garabedian discloses, to a person of ordinary skill in the art, that the overflow geometry provided therein is configured specifically for the respective system, where the respective system dynamic is critically dependent upon the geometries of the components used in the system. Accordingly, they cannot be transferred to different systems. Therefore, there is no motivation for a person of ordinary skill in the art to use the types of the outlet openings disclosed by Garabedian for use in different systems, in which a different flow guidance of the overflow pieces is provided. Contrary to the Examiner's allegation, applicant particularly and absolutely believes that the pressure fluctuations and pulse, which are problematic for the system according to the reference Garabedian, occur only as a result of the

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overflow lines being directed vertically downward. They would not play a role in an alternative system, such as for example the system disclosed in Krebs. Therefore, there is no motivation for a person of ordinary skill in the art to modify Krebs based on the disclosure of Garabedian. (Emphasis added)

**Response:** Applicant implies that the teachings of Garabedian are applicable ONLY to the geometries set forth therein, note "Garabedian explicitly discloses this". The Examiner can find no support for this statement within Garabedian itself, nor why the teachings would NOT be considered general knowledge pertinent to the nuclear containment suppression pool art, which Garabedian is directly applicable and related to.

It is noted that applicants overflow pipes are also directed downward although not specifically vertical (because of the elbow).

Further responding to applicant's argument that there is no suggestion to combine the references, the Courts have stated that "[a] **suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art**, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references...The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art... there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (Emphasis added) In re Kahn, 78 USPQ2d 1329, 1336 (CA FC 2006).

The Examiner asserts that he has provided such "articulated reasoning" to support the legal conclusion of obviousness as set forth above and recapitulated herein that the "incentive" or "problem to be solved" is the "chugging phenomenon" or "to minimize the chugging phenomenon" that occurs within pressure suppression systems of nuclear reactors. This phenomenon has been a topic of interest for many years (for example, since at least 1979) as evidenced by the references cited in the attached PTO-892, i.e. Sargus, Wang and Powers. In this regard it is considered that those of ordinary skill would turn to other inventions as a method of alternatives solutions instead of trying to reinvent the wheel. Accordingly it is considered that the Examiner has clearly set forth how the problem to be solved was addressed by other inventors.

6. Regarding sections 8-9 of the previous Office action, Applicant merely argued that the base claims were allowable and therefore the dependant claims were also because the references did not make up for the alleged deficiencies of the art as applied to the base claims. Since the Examiner has again explained how the references do indeed read on the claim language as broadly interpreted, these claims remain rejected and the previous rejections of these sections are incorporated herein by reference.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as disclosing the issue of pressure containment chugging suppression discussions, i.e. that the problem in the art was known in at least 1979.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

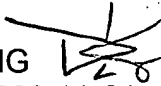
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene Jr. whose telephone number is (571) 272-6876. The examiner can normally be reached on Mon-Fri 8:30am - 5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ELLA COLBERT  
PRIMARY EXAMINER